

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**LEE T. NEWELL,**

**Defendant.**

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**CASE NO. 8:08CR163**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on the Report and Recommendation (Filing No. 36) issued by Magistrate Judge F.A. Gossett recommending denial of the Defendant's motion to disclose the identity of a confidential informant ("CI") (Filing No. 18).<sup>1</sup> No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

The Defendant seeks an order requiring the government to disclose the identity of a confidential informant. Judge Gossett and the parties agreed that the matter would be submitted in a Report and Recommendation rather than an order. (Filing No. 38 ("Tr."), at 9-10.) Judge Gossett made oral findings of fact and conclusions of law, and, noting that this case does not involve the issuance of a search warrant, he determined that because the CI is not a percipient witness to the charged offenses the motion should be denied.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. The Court has read the Defendant's brief (Filing No. 19) and the transcript (Filing No. 38). The Court

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<sup>1</sup>Also pending is the Defendant's motion to suppress (Filing No. 16), which has not been heard for reasons stated at the hearing on the now before the Court.

has also viewed the evidence. (Filing No. 34) Because Judge Gossett fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety. This Court agrees that the CI is not a percipient witness as the CI has no information to offer with respect to the charges in the Indictment. See *United States v. Wright*, 145 F.3d 972, 975-76 (8<sup>th</sup> Cir. 1998) (affirming the denial of a motion to disclose the identity of a confidential informant, where the informant's knowledge related to matters unrelated to those charged).

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 36) is adopted in its entirety; and
2. The Defendant's motion to disclose the identity of the confidential informant (Filing No. 18) is denied.

DATED this 18<sup>th</sup> day of September, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge